



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY
[FRL-9640-8; EPA-HQ-OW-2010-0782]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for
Stormwater Discharges from Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: EPA's Regional Offices are issuing their final 2012 National Pollutant Discharge Elimination System general permit for stormwater discharges from large and small construction activities. This construction general permit includes new requirements that implement the technology-based Effluent Limitation Guidelines and New Source Performance Standards, which were issued by EPA for the construction and development industry on December 1, 2009. The permit also includes new water quality-based requirements for construction sites discharging stormwater to waters requiring additional pollutant control. EPA is issuing this construction general permit for five (5) years, during which time the permit will provide coverage to eligible existing and new construction projects in all areas of the country where EPA is the National Pollutant Discharge Elimination System permitting authority, including Idaho, Massachusetts, New Hampshire, and New Mexico, Indian Country Lands, Puerto Rico, Washington, DC, and U.S. territories and protectorates.

DATES: The permit became effective on February 16, 2012. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2008 CGP on February 15, 2012. In accordance with 40 CFR Part 23, this permit shall be considered issued for the purpose of judicial review on March 1, 2012. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part 1.4.2 of the permit. This permit also provides additional dates for compliance with the terms of these permits.

FOR FURTHER INFORMATION CONTACT: For further information on the final NPDES general permit, contact the appropriate EPA Regional office listed in Section I.G, or you can send an email to cgp@epa.gov. You may also contact Greg Schaner, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-0721, Erika Farris, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-7548, or Jeremy Bauer, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-2775.

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

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I. General Information

A. Does this action apply to me?

The final 2012 construction general permit (also referred to as “CGP” or “2012 CGP”) applies to the following construction activities:

Table 1 Entities Potentially Regulated by this Permit

Category	Examples of Affected Entities	North American Industry Classification System (NAICS) Code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Construction of Buildings	236
	Heavy and Civil Engineering Construction	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action.

Other types of entities not listed in the table could also be affected. To determine whether your facility is regulated by this action, you should carefully examine the definition of "construction activity" and "small construction activity" in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding "FOR FURTHER INFORMATION CONTACT" section.

Coverage under this permit is available to operators of eligible projects located in those areas where EPA is the permitting authority and has opted to make this general permit available for use. A list of eligible areas is included in Appendix B of the final CGP. Eligibility for coverage under the 2012 CGP is limited to operators of stormwater discharges from "new projects", "existing projects", and "new operators of a new or

existing project”. A “new project” is a construction project that commenced or will commence construction activities on or after February 16, 2012. An “existing project” is a construction project that commenced construction prior to February 16, 2012. A “new operator of a new or existing project” is an operator that replaces an existing operator on a construction project through transfer of ownership and/or operation. EPA notes that the permit also provides coverage for “emergency-related projects”, which are construction projects that are carried out in response to a public emergency, and that require immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services.

B. How can I get copies of these documents and other related information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2010-0782. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Water Docket is (202) 566-2426.

2. *Electronic Access.* You may access this **Federal Register** document

electronically through the United States government on-line source for Federal regulations at <http://www.regulations.gov>.

Electronic versions of this final permit and fact sheet are available on EPA's NPDES website at <http://www.epa.gov/npdes/stormwater/cgp>.

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/dockets>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

C. *Who are the EPA regional contacts for this final permit?*

For EPA Region 1, contact Newton Tedder at tel.: (617) 918-1038 or e-mail at tedder.newton@epa.gov.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637-3856 or e-mail at venezia.stephen@epa.gov, or for Puerto Rico, contact Sergio Bosques at tel.: (787) 977-5838 or e-mail at bosques.sergio@epa.gov.

For EPA Region 3, contact Chuck Schadel at tel.: (215) 814-5761 or e-mail at schadel.chuck@epa.gov.

For EPA Region 4, contact Michael Mitchell at tel.: (404) 562-9303 or e-mail at

mitchell.michael@epa.gov.

For EPA Region 5, contact Brian Bell at tel.: (312) 886-0981 or e-mail at *bell.brianc@epa.gov.*

For EPA Region 6, contact Suzanna Perea at tel.: (214) 665-7217 or e-mail at *perea.suzanna@epa.gov.*

For EPA Region 7, contact Mark Matthews at tel.: (913) 551-7635 or e-mail at *matthews.mark@epa.gov.*

For EPA Region 8, contact Greg Davis at tel.: (303) 312-6314 or e-mail at *davis.gregory@epa.gov.*

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972-3510 or e-mail at *bromley.eugene@epa.gov.*

For EPA Region 10, contact Margaret McCauley at tel.: (206) 553-1772 or e-mail at *mccauley.margaret@epa.gov.*

II. Background of Permit

A. Statutory and Regulatory History

The Clean Water Act (“CWA”) establishes a comprehensive program “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a). The CWA also includes the objective of attaining “water quality which provides for the protection and propagation of fish, shellfish and wildlife and ... recreation in and on the water.” 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control discharges of pollutants from point sources through the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits.

The Water Quality Act of 1987 (WQA) added section 402(p) to the Clean Water Act (CWA), which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. 33 U.S.C. 1342(p). EPA published a final regulation in the **Federal Register**, often called the “Phase I Rule”, on November 16, 1990, establishing permit application requirements for, among other things, “storm water discharges associated with industrial activity.” See 55 FR 47990. EPA defines the term “storm water discharge associated with industrial activity” in a comprehensive manner to cover a wide variety of facilities. See *id.* Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of “industrial activity” pursuant to 40 CFR 122.26(b)(14)(x). The second rule implementing section 402(p), often called the Phase II Rule, was published in the **Federal Register** on December 8, 1999. It requires NPDES permits for discharges from construction sites disturbing at least one acre but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722. EPA is proposing to issue this final CGP under the statutory and regulatory authority cited above.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions to meet technology-based effluent limits established under Section 301 and, where applicable, Section 306. Effluent limitations guidelines (ELGs) and New Source Performance Standards (NSPS) are

technology-based effluent limitations that are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Subchapter III of the CWA.

Once a new national standard is established in accordance with these sections, NPDES permits must incorporate limits based on such technology-based standards. See CWA sections 301 and 306, 33 U.S.C. 1311 and 1316, and 40 CFR 122.44(a)(1). Prior to the issuance of such national standards, permitting authorities are required to incorporate technology-based limits on a best professional judgment basis. CWA section 402(a)(1); 40 CFR 125.3(a)(2)(ii)(B). On December 1, 2009, EPA published final regulations establishing technology-based Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for the Construction & Development (C&D) point source category. See 40 CFR Part 450, and 74 FR 62996 (December 1, 2009). The Construction & Development Rule, or “C&D rule”, became effective on February 1, 2010; therefore, all NPDES construction permits issued by EPA or states after this date must incorporate the C&D rule requirements. Because EPA will be issuing its new CGP after the effective date of the C&D rule, the Agency is required by the CWA and 40 CFR 122.44(a)(1) to incorporate into its new CGP all applicable C&D rule requirements.

B. Stay of the C&D Rule Numeric Limit and Implications for this Permit

The C&D rule was finalized on December 1, 2009, and included non-numeric requirements for erosion and sediment control, stabilization, and pollution prevention (see 40 CFR 450.21(a) thru (f)), and, for the first time, a numeric limitation on the discharge of turbidity from active construction sites (see 40 CFR 450.22). Since its

promulgation, EPA discovered that the data used to calculate the numeric limit for turbidity were misinterpreted, and that it was necessary to recalculate the numeric limit.

On August 12, 2010, EPA filed a motion with the U.S. Court of Appeals for the Seventh Circuit, requesting the Court issue an order vacating and remanding to the Agency limited portions of the final C&D rule, specifically the numeric turbidity limit.

To address the specific issues raised by petitioners, the motion also provided that EPA:

- “may address (and if necessary take further regulatory action on) certain impacts of the final rule specific to linear gas and electricity utility projects.”
- will “solicit site specific information regarding the applicability of a numeric limit” to cold weather sites and to small sites that are part of a larger plan of development that is subject to the numeric limit.

On August 24, 2010, the U.S. Court of Appeals for the Seventh Circuit remanded the matter to EPA but did not vacate the numeric limit. On September 9, 2010, the National Association of Home Builders (NAHB) filed a motion for clarification (which EPA did not oppose) asking the Court to (1) vacate the limit and (2) hold the case in abeyance instead of remanding the matter to EPA. On September 20, 2010, the Court granted the motion in part by ruling to hold the matter in abeyance pending EPA consideration of the numeric limit and the other remand issues, but the Court did not vacate the numeric limit. Instead, the Court stated that "EPA may make any changes to the limit it deems appropriate, as authorized by law.”

On November 5, 2010, EPA issued a direct final regulation and a companion proposed regulation to stay the numeric limitation at 40 CFR 450.22 indefinitely. The stay took effect on January 4, 2011, resulting in an indefinite postponement of the implementation of the 280 NTU limit. Since the numeric portion of the rule was stayed,

EPA and the states are no longer required to incorporate the numeric turbidity limitation and monitoring requirements found at §450.22(a) and §450.22(b). However, the remainder of the regulation is still in effect and must be incorporated into newly issued permits.

EPA notes that it published a **Federal Register** notice on January 3, 2012 requesting additional data on the performance of technologies in controlling turbidity in stormwater discharges from construction sites. The notice also requests information on other topics relevant to establishing numeric effluent limitations for stormwater discharges from these sites, including sample collection, applicability to linear electric transmission line construction, cold weather considerations, and the ability of small sites to meet a numeric standard. See 77 Federal Register 112 (January 3, 2012).

The final CGP is directly affected by the stay in that, due to the stay, the permit does not need to include the numeric turbidity limit. When EPA issued the draft permit for public comment, the Agency was uncertain whether its work to complete the recalculation of the numeric turbidity limit would be completed in time to incorporate into the final permit. To be able to implement the yet-to-be promulgated turbidity limit in the final permit, EPA included in the draft permit a placeholder for the effluent limit, as well as proposed implementation requirements such as turbidity monitoring and reporting protocols. Because EPA is still in the process of collecting data to support the recalculation of the numeric turbidity limit, and therefore a final numeric turbidity limit is not yet available to implement, the Agency has finalized the CGP without the numeric limit and related monitoring and reporting requirements. EPA has, however,

implemented the remaining portion of the C&D rule that was not affected by the stay of the numeric limit.

III. Summary of the Final CGP

Today's final permit includes new requirements that implement the portions of the effluent limitations guidelines and new source performance standards in the C&D rule that are unaffected by the stay of the numeric turbidity limit. Under these rules, site operators are required to install and implement stormwater measures to accomplish erosion and sediment control, pollution prevention, and stabilization. For sites that discharge to waters where additional controls are necessary to ensure compliance with applicable water quality standards, the final permit includes new water quality-based effluent limits. This section summarizes the C&D rule requirements upon which the permit's technology-based requirements are based, and highlights the significant new permit provisions included in the final permit.

A. Non-Numeric C&D Rule Requirements

The non-numeric effluent limitations in the C&D rule are designed to prevent the mobilization and discharge of sediment and sediment-bound pollutants, such as nutrients, and to prevent or minimize exposure of stormwater to construction materials, debris, and other sources of pollutants on construction sites. In addition, these non-numeric effluent limitations limit the generation of dissolved pollutants. For background, soil on construction sites can contain a variety of pollutants such as nutrients, organics, pesticides, herbicides, and metals. These pollutants may be present naturally in the soil, such as arsenic or selenium, or they may have been contributed by previous activities on

the site, such as agriculture or industrial activities. These pollutants, once mobilized by stormwater, can detach from the soil particles and become dissolved pollutants. Once dissolved, these pollutants would not be removed by down-slope sediment controls. Source control through minimization of soil erosion is therefore the most effective way of controlling the discharge of these pollutants.

The non-numeric effluent limits in the C&D rule, upon which the technology-based requirements in the final CGP are based, include the following:

- Erosion and Sediment Controls: Permittees are required to design, install, and maintain effective erosion and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed, and maintained to:
 1. Control stormwater volume and velocity within the site to minimize soil erosion;
 2. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and streambank erosion;
 3. Minimize the amount of soil exposed during construction activity;
 4. Minimize the disturbance of steep slopes;
 5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity, and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range

of soil particle sizes expected to be present on the site;

6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible; and
7. Minimize soil compaction and, unless infeasible, preserve topsoil.

- Soil Stabilization Requirements: Permittees are required to, at a minimum, initiate soil stabilization measures immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.

Stabilization must be completed within a period of time determined by the permitting authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed and vegetative stabilization measures must be initiated as soon as practicable.

- Dewatering Requirements: Permittees are required to minimize the discharge of pollutants from dewatering trenches and excavations. Discharges are prohibited unless managed by appropriate controls.
- Pollution Prevention Measures: Permittees are required to design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or an alternative control that provides equivalent or better treatment prior to discharge;
 2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
 3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- Prohibited Discharges: The following discharges from regulated construction sites are prohibited:
 1. Wastewater from washout of concrete, unless managed by an appropriate control;
 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
 4. Soaps or solvents used in vehicle and equipment washing.
 - Surface Outlets: When discharging from basins and impoundments, permittees are required to utilize outlet structures that withdraw water from the surface, unless infeasible.

When EPA was writing the C&D rule's final non-numeric effluent limits listed above, the Agency intended to provide discretion to permitting authorities to determine how best to implement these provisions with respect to requiring controls and measures appropriate for the conditions in their permitted areas. For example, the preamble to the C&D rule explains that "EPA purposefully drafted the non-numeric effluent limitations to allow for flexibility in how the permitting authority implements the requirement in NPDES permits." See 74 FR 63016. As the permitting authority responsible for issuing stormwater permits for construction activities in four states, Indian Country, construction by Federal Operators, Washington, DC, and U.S. territories/protectorates, EPA believes that it is important in this final permit to include requirements that more specifically define what EPA believes are appropriate to implement each of the C&D rule's non-numeric limits. Accordingly, in translating the C&D rule requirements into the final CGP, EPA added specificity to many of the C&D rule provisions that it believed would benefit from further definition, such as the requirements to "provide and maintain natural buffers" and to "minimize soil compaction", among others.

B. Numeric C&D Rule Requirements

As stated above in Section II.B, the numeric turbidity limit portion of the C&D rule has been indefinitely stayed. Because a recalculated numeric limit has not yet been promulgated, this permit does not include a technology-based numeric turbidity limit, nor does it include related monitoring and reporting requirements that would implement such a limit.

C. Water Quality-Based Effluent Limits

Because the C&D rule requirements are technology-based, they do not account for the level of pollutant control that may be necessary in a specific area to meet applicable water quality standards. CWA Section 301(b)(1)(C) and EPA's regulations at 40 CFR 122.44(d)(1) require permitting authorities to include additional or more stringent permit requirements when necessary to achieve water quality standards. With this requirement in mind, the final CGP includes additional requirements that apply to those sites that discharge to waters impaired for sediment, sediment-related parameters, or nutrients, including nitrogen and phosphorus, which are parameters typically associated with stormwater discharges from construction sites, and to those sites that discharge to waters requiring enhanced protection under a state or tribe's antidegradation requirements. To assist construction operators in determining if their site discharges to an impaired water, EPA has developed and made available an Internet-based tool, which links watershed-based geographical mapping information with state and tribal lists of impaired waters. The mapping tool can be accessed through the eNOI system at <http://cfpub.epa.gov/npdes/stormwater/enoi.cfm>.

D. Summary of Significant Changes from the 2008 CGP

The final permit includes a number of new or modified requirements, many of which are related to the implementation of the new C&D rule effluent limits, and thus differ from the 2008 CGP. The following list summarizes the changes to the CGP:

1. Structure/Appearance of Permit: EPA attempted to restructure its CGP so that it would be better organized to present requirements in a generally more readable manner. It is EPA's hope that this structure will enhance the permittees'

understanding of and compliance with the permit's requirements. For instance, the permit's stormwater control requirements are organized into distinct and related categories, such as erosion and sediment control requirements, stabilization requirements, and pollution prevention requirements.

2. Eligibility for Emergency-Related Construction: EPA provides immediate authorization for construction activities required for response to public emergencies (e.g., natural disaster such as a tornado or hurricane, widespread disruption in essential public services). Immediate authorization will enable work that is necessary to avoid imminent endangerment to human health or the environment, or to reestablish essential public services, to proceed without administrative delay. The construction operator must submit an NOI and develop a stormwater pollution prevention plan (SWPPP) within 30 calendar days after commencing earth-disturbing activities, whereas typically operators must submit NOIs 14 days prior to commencing earth-disturbing activities.
3. Eligibility for Use of Treatment Chemicals: EPA authorizes the use of polymers, flocculants, or other treatment chemicals at sites provided operators using treatment chemicals comply with the requirements in Part 2.1.3.3 of the permit. The use of cationic treatment chemicals is not eligible for permit coverage unless the applicable EPA Regional Office specifically approves its use together with any additional controls necessary to ensure that the use of such chemicals does not result in an exceedance of applicable water quality standards.

4. Endangered Species and Historic Properties Requirements: Construction operators are required to follow the procedures for determining eligibility related to the protection of listed endangered or threatened species and their critical habitat and to the consideration of impacts to historic properties. See Appendices D and E, respectively.
5. Authorization Process / NOIs: EPA has increased the “waiting period” from 7 days to 14 days for construction site operators seeking coverage under this permit. This new 14-day timeframe is intended to better reflect the endangered species-related reviews that must take place prior to authorization. EPA also is hoping to maximize the use of its electronic NOI, or eNOI, process for authorizing construction discharges by requiring that construction operators seek coverage using the eNOI system. A “paper NOI” will still be allowed, but prior approval by the applicable EPA Region is necessary.
6. Sediment and Erosion Controls: The final permit includes specific requirements that implement the C&D rule’s sediment and erosion control limits. While some of these requirements are already included in the 2008 CGP, the final permit includes more detail and additional requirements in order to more closely track the language and organization of the C&D rule. The following is a list of requirements that can be considered significant modifications to the 2008 CGP:
 - i. Installation of Sediment Controls Prior to Construction – By the time earth-disturbing activities in any given portion of the site have begun, operators must install and make operational any downgradient sediment

controls for the initial site clearing, grading, excavating, and other land-disturbing activities, unless infeasible. Following the installation of these initial controls, all other stormwater controls described in the SWPPP must be installed and made operational as soon as conditions allow.

- ii. General Maintenance Requirements – The final permit includes requirements for initiating work to fix problems on the same day that they are found and completing such work by the close of the next work day if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.
- iii. Buffer Compliance Alternatives – To implement the C&D rule requirement to provide and maintain natural buffers around surface waters, unless infeasible, sites must ensure that any discharges flowing through the area between the disturbed portions of the property and any surface waters located within 50 feet of the property on which the construction activities will occur are treated by an area of undisturbed natural vegetation and/or additional erosion and sediment controls to achieve a reduction in sediment loads equivalent to that achieved by 50 feet of undisturbed natural vegetation. Certain exemptions to this requirement based on feasibility considerations are also provided. Appendix G of the final permit has been added to provide guidance to operators in complying with this requirement.

- iv. Perimeter Controls – Operators are required to install sediment controls along those perimeter areas of the site that will receive stormwater from earth-disturbing activities.
- v. Exit Points – Operators are required to minimize track-out of sediment onto streets and other paved areas from vehicles exiting the construction site. To comply with this requirement, the operator must (1) restrict vehicle use to properly designated exit points, (2) use appropriate stabilization techniques and other controls, as necessary, at all points that exist onto paved roads, (3) where necessary, use additional controls to remove sediment from vehicle tires prior to exit and (4) remove tracked-out sediment from paved surfaces by the end of the work day in which the track out occurs or by the end of the next work day if track-out occurs on a non-work day.
- vi. Storm Drain Inlets – Controls must be installed and maintained to remove sediment from the discharge prior to entry into any storm drain inlets that carry stormwater flow directly from the site to a surface water and that are accessible to the operator.
- vii. Dewatering Practices – Specific controls and discharge restrictions apply to sites that will discharge ground water or accumulated stormwater removed from excavations, trenches, foundations, vaults, or other similar points of accumulation.

5. Stabilization Requirements: The permit includes modified stabilization requirements that define more specifically what EPA requires for temporary and final stabilization.
6. Pollution Prevention: Beyond adopting the specific C&D rule requirements for pollution prevention and the prohibition of certain discharges, the final permit includes specific control requirements that ensure pollutant discharges are eliminated or minimized, depending on the source. The pollution prevention requirements restrict the discharge of a wide range of construction-related chemicals and materials, including fertilizers, at construction sites.
7. Water Quality-Based Effluent Limits: In addition to general requirements that protect water quality in all receiving waters, the final permit includes specific requirements that apply to sites discharging to waters impaired for common pollutants associated with construction activities, such as sediment and nutrients, and to sites discharging to high quality waters. For such sites, construction activities are subject to additional requirements, including tighter stabilization deadlines (complete stabilization within 7 calendar days of the temporary or permanent cessation of construction activities) and more frequent site inspections. The permit also includes additional requirements for waters identified as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes.
8. Site Inspections: The frequency of inspections generally is increased relative to the 2008 CGP. EPA believes that inspections are a cost-effective means of ensuring that controls are operating properly and thus protecting water quality.

The storm event size that triggers site inspections for those using a storm-based schedule is also decreased from a 0.5 inch storm event to a 0.25 inch storm event. EPA has found that most storm events of 0.25 inches or greater do lead to discharges, so that inspection is warranted if the operator is using a storm-based inspection schedule. For multi-day storms, EPA has also clarified that an inspection is required both after the first day of the event and after the end of the event. As in the 2008 CGP, operators may also choose a fixed inspections schedule that is not storm dependent. EPA makes explicit the requirement for permittees to visually assess the quality of the discharge (e.g., color, odor, floating, settled, or suspended solids) if the site inspection occurs during a discharge-generating rain event.

9. Corrective Actions: Although the 2008 CGP required corrective action, it did not include specific requirements instructing the permittee as to what conditions trigger specific corrective actions and what deadlines apply. The final permit includes specific triggering conditions for corrective action as well as deadlines to fix such problems and document what was done.
10. Stormwater Pollution Prevention Plan (SWPPP): The SWPPP requirements are modified in accordance with the changes discussed above. In general, the requirements are more specific than, but consistent with the 2008 CGP.
11. Notice of Termination: EPA includes additional requirements that affect when a site may terminate coverage under the CGP. For instance, beyond enabling sites to terminate coverage when earth-disturbing activities have stopped and the site is

stabilized, the permit requires the removal of all temporary stormwater controls and construction materials, waste, and waste handling devices.

E. Construction Projects Eligible for Permit Coverage

This final permit provides coverage to eligible operators of “new projects”, “existing projects”, and “new operators of existing or new projects.” Operators of new projects must submit a Notice of Intent (NOI) to EPA 14 days prior to commencing earth-disturbing activities to obtain coverage under this permit. The exception is for operators of emergency-related projects, which may commence construction activities immediately provided they submit an NOI within 30 days of commencing such activities. For existing projects, although the existing 2008 CGP has expired, operators are authorized under the expired permit until they are provided coverage under today’s permit, in accordance with EPA’s regulations at 40 CFR 122.6. A similar approach also applies to new projects that commence construction on or after February 16, 2012, but no later than March 1, 2012. Within 90 days of the issuance of this final permit, operators of existing projects must complete an NOI for coverage under the new permit. If a permitted operator is transferring control of a construction project to a new operator, the new operator must submit an NOI 14 days prior to the date of transfer.

F. Geographic Coverage

This permit provides coverage for stormwater discharges from construction activities that occur in areas where EPA is the permitting authority. The areas of geographic coverage of this permit are listed in Appendix B, and include the states of New Hampshire, Massachusetts, New Mexico, and Idaho as well as all Indian Country

lands, and construction by Federal Operators in selected states. Permit coverage is also provided in Puerto Rico, the District of Columbia, and the Pacific Island territories. The only changes to the 2008 CGP's area of coverage is that Indian Country lands in Region 4 are now added to the final permit's area of coverage, and due to a phased delegation of the NPDES program to the state of Alaska starting in late 2008, EPA now retains NPDES permitting authority only for discharges occurring within the Denali National Park and Preserve, and in Indian Country located within the state of Alaska.

In addition, because certifications required by Section 401 of the Clean Water Act, and for a few states certifications required by the Coastal Zone Management Act, were not received in time, new and existing construction projects in the following areas are not yet eligible for coverage under this permit:

- the State of Idaho;
- Construction in the State of Washington by Federal Operators;
- The Fond Du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; and
- Bad River, Lac Du Flambeau, and Sokaogon Chippewa (Mole Lake) Community in Wisconsin.

EPA will announce the availability of coverage under the CGP for these areas in separate **Federal Register** notice(s) as soon as possible after the certifications are completed. In the meantime, operators of new construction projects in these areas may apply for coverage with their EPA Regional Office under an individual NPDES permit. For operators of existing projects that are currently covered under either the 2003 or 2008 CGPs, their coverage will continue under those permits. If the project will continue after

the date that the 2012 CGP becomes available in the applicable area, the operator will be given 90 days to file an NOI for coverage under this permit.

IV. Webcasts, Guidance, and Other Implementation Assistance

Following issuance of this permit, EPA plans to provide further assistance to construction operators, state permitting authorities, and other interested parties on various aspects of this new permit. The following activities or documents are already planned:

- National Webcast: EPA will host a webcast on March 15, 2012 that will provide an overview of the new permit and an opportunity for participants to ask questions. EPA anticipates that more webcasts will be offered covering the same material or more specific aspects of the permit. The Agency will announce any future webcasts on the CGP website at <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>.
- SWPPP Template, SWPPP Guide and Sample SWPPPs: EPA has provided an updated *SWPPP Template* that can be used by construction operators to put together their site-specific SWPPP document. The *SWPPP Template*, which is available at <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>, has been updated to include the new requirements of the 2012 CGP. EPA is also in the process of updating its SWPPP guide, *Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites*. While EPA plans to make the updated SWPPP guide available in the next few months, construction operators may still find the guide useful as an overall planning document and for specific components of the SWPPP, to the extent that they are consistent with the new

permit's requirements. Additionally, EPA also plans to provide in the near future updated, sample SWPPPs, which will illustrate examples of what the Agency believes to be documents that comply with the Part 7 SWPPP requirements of the new permit.

- Inspection Report Template: EPA will also be providing an updated template form that can be used by construction operators to document inspections completed pursuant to the new permit's requirements in Part 4.

EPA will consider additional outreach to support the new permit based on the level of interest and demand.

V. National Environmental Policy Act (NEPA)

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4307h), the Council on Environmental Quality's NEPA regulations (40 CFR Part 15), and EPA's regulations for implementing NEPA (40 CFR Part 6), EPA has prepared an Environmental Assessment (EA) that analyzed the potential environmental impacts of issuing the new CGP. The EA considered the potential environmental impacts from the discharge of pollutants in stormwater discharges associated with construction activity where EPA is the permitting authority. The environmental review process, which is documented by the EA, indicated that no significant environmental impacts are anticipated from the issuance of the new CGP. The EA was posted on the docket for this permit at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2010-0782-0173> for public review and comment. Accordingly after evaluating comments received on the EA, EPA issued a Finding of No Significant Impact (FONSI) to document this

determination.

For further information regarding NEPA contact: Jessica Trice, NEPA Compliance Division, Office of Federal Activities, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code: 2252A, Washington, DC 20460. *Telephone:* (202) 564–6646.

VI. Executive Orders 12866 and 13563

Under Executive Order (EO) 12866 (58 FR 51735 (October 4, 1993)) this action is a “significant regulatory action.” Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

VII. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this permit will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations

because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The provisions in this permit include new requirements for erosion and sediment control and pollution prevention, and result in an increase in the level of environmental protection. For sites covered under the new permit, the requirements in this permit apply equally to all construction projects that disturb one or more acres in areas where EPA is the permitting authority, and therefore do not disproportionately and adversely affect minority or low-income populations.

VIII. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In compliance with Executive Order 13175, EPA has consulted with tribal officials to gain an understanding of and, where necessary, to address the tribal implications of the final CGP. In the course of this consultation, EPA undertook the following activities:

- December 15, 2010 – EPA presented an overview of the current CGP and the requirements in the C&D rule to the National Tribal Water Council. The presentation was posted on the Council’s portal website at <http://www.epa.gov/tp/consultation/calendar-arch.htm>.
- March 16, 2011 – EPA presented additional information to the Council related to the CGP and the C&D rule requirements that would be incorporated into the proposed permit. This presentation, as well as a document providing written

answers to questions, was posted on the Council's portal website at

<http://www.epa.gov/tp/pdf/meeting-qa-031611.pdf>.

- April 26, 2011 – EPA provided email notification to Tribes of the April 25, 2011 proposal of the draft CGP, and invited those interested to provide the Agency with comments. EPA notes that during the public comment period on the proposed CGP, EPA received written comments from one tribe. The tribe provided specific comments requesting modifications or clarification for provisions in several permit sections, including erosion and sediment control, pollution prevention, water quality-based requirements, inspections, corrective action, and permit termination. EPA addressed many of the tribe's concerns in the final permit, and responded to each of the tribe's comments in the Response to Comment Document located in the docket.
- January 19, 2012 – EPA provided an overview to Tribal Historic Preservation Officials (THPOs) of the screening process to be used in the new permit for determining whether stormwater control activities authorized under the permit could affect historic properties.

EPA also notes that as part of the finalization of this permit it has completed Section 401 certification procedures with all applicable tribes where this permit will apply (see Appendix B), with the exception of tribes in Region 5, which, as noted above, are still in the process of completing such certification.

IX. Analysis of Economic Impacts

EPA expects the economic impact on entities covered under this permit, including small businesses, to be minimal. A copy of EPA's economic analysis, titled, "Economic Analysis: Cost Implications of the 2012 CGP" is available in the docket for this permit. The economic impact analysis indicates that while there will be some incremental increase in the costs of complying with the new permit, these costs will not have a significant economic impact on a substantial number of small entities. The economic impact analysis is included in the administrative record for this permit.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: February 16, 2012

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Regional Administrator, EPA Region 1.

Dated: February 19, 2012

José C. Font,

Acting Division Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: February 16, 2012

John Filippelli,

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Dated: February 16, 2012

Melanie L. Pallman,

Acting Assistant Regional Administrator, Office of Partnerships and Regulatory

Assistance, EPA Region 8.

Dated: February 16, 2012

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Dated: February 16, 2012

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